STATE OF MICHIGAN

COURT OF APPEALS

ROBERT A. MORSE and FRANCES A. MORSE, d/b/a R-LAND, INC.,

Plaintiffs-Appellants,

v

FIRST OF AMERICA BANK-MICHIGAN, f/k/a FIRST OF AMERICA BANK-NORTHERN MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
August 1, 2000

No. 212197
Grand Traverse Circuit Court
LC No. 97-016492-CZ

ROBERT A. MORSE and FRANCES A. MORSE, d/b/a R-LAND, INC.,

Plaintiffs,

v

FIRST OF AMERICA BANK-MICHIGAN, f/k/a FIRST OF AMERICA BANK-NORTHERN MICHIGAN,

Defendant-Appellee,

and

PETER J. ZIRNHELT,

Appellant.

No. 215324
Grand Traverse Circuit Court
LC No. 97-016492-CZ

Before: Zahra, P.J., and White and Hoekstra, JJ.

PER CURIAM.

In Docket No. 212197, plaintiffs appeal as of right from an order granting defendant summary disposition on res judicata grounds, MCR 2.116(C)(7), and imposing sanctions against plaintiffs and their attorney under MCR 2.114(E). In Docket No. 215324, plaintiffs' attorney appeals by leave granted the imposition of sanctions against him. We affirm.

In a previous action against several defendants to quiet title, plaintiffs named defendant mortgage holder, First of America Bank (defendant), as required by MCL 600.2932; MSA 27A.2932, to give defendant notice of the quiet title action involving property in which defendant had an interest. Defendant filed a motion for summary disposition and plaintiffs' response requested leave to amend their complaint to add a claim that defendant's secured interest in the property is limited to the face amount of the mortgage. Defendant's reply brief argued the proposed amendment would be futile. The circuit court granted defendant's motion for summary disposition, adopting its arguments, and dismissed plaintiffs' claim with prejudice.

When defendant later sought to foreclose on the property, plaintiffs filed a second suit against defendant, seeking a declaratory judgment regarding the amount of the lien, and a temporary restraining order to block the foreclosure. The circuit court denied the restraining order, granted defendant summary disposition on res judicata grounds, and ordered plaintiffs, and their counsel, to pay sanctions. This appeal ensued.

I

Plaintiffs first contend that the circuit court erred in granting defendant summary disposition on the basis of res judicata because the subject matter of the two actions was not the same and there was no judgment on the merits in the first action. We disagree.

The applicability of res judicata to bar a subsequent suit is a question of law that this Court reviews de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

The term "res judicata" is used to refer to preclusion (or former adjudication) broadly, including both "issue preclusion" and "claim preclusion," see Wright, The Law of Federal Courts, § 100A, pp 722-723 (5th ed, 1994), and to refer, more narrowly, to claim preclusion (or "merger and bar"), which forecloses issues that could have or should have been raised on the basis of the same cause of action. See *People v Gates*, 434 Mich 146, 154 n 7; 452 NW2d 627 (1990). Issue preclusion, or "collateral estoppel" forecloses re-litigation of issues once they have been fully litigated in a previous cause of action. *Gates, supra* at 154; Wright, *id*; Restatement Judgments, 2d, § 27, p 250. In the instant case,

the circuit court properly applied the doctrine of res judicata in the broader sense,[1] but in the narrower sense the doctrine of collateral estoppel should be applied.

The doctrine of collateral estoppel precludes relitigation of an issue in a different, subsequent action between the same parties or their privies, when the earlier proceeding resulted in a valid final judgment, and the issue in question was actually and necessarily determined in that prior proceeding. *Gates*, *supra* at 155; *id.*; *Dearborn Heights School District No. 7 v Wayne Co MEA/NEA*, 233 Mich App 120, 124; 592 NW2d 408 (1998). Summary disposition is properly granted on collateral estoppel grounds under MCR 2.116(C)(7). *Lichon v American Ins Co.*, 435 Mich 408, 427; 459 N.W.2d 288 (1990).

The elements of collateral estoppel are met here. First, there is no dispute that the same parties were litigants in both actions. Second, the issue raised in the second suit was the subject of a valid final judgment in the first suit. A denial of leave to amend a pleading based on grounds of futility of the amendment is a final decision on the merits. *DeCare v American Fidelity Fire Ins Co*, 139 Mich App 69, 77-78; 360 NW2d 872 (1984); *Martin v Michigan Consolidated Gas Co*, 114 Mich App 380, 383-384; 319 NW2d 352 (1982). Plaintiffs first raised the issue of limiting defendant to the face value of the mortgage in response to defendant's motion for summary disposition in the first suit. Defendant's motion argued that all parties to the suit agreed during mediation that defendant's lien on the property was superior to the other parties' interests, and that therefore there was no basis for keeping them in the lawsuit. Plaintiffs' response to the motion requested leave to amend their complaint to add a claim that the extent of defendant's lien should be limited to the face value of their original mortgage on the property. Defendants argued in a reply brief that there was no legal basis for limiting the amount of their indebtedness to the face amount of the mortgage, and such an amendment would be futile. The circuit court granted defendant's motion for summary disposition stating that, "[t]his Court adopts the opinion of the Bank, that it is their legal right . . . to be secured on the full amount of the indebtedness." Although not expressly stated in so many words, the circuit court's intermediate finding that amendment would be futile is manifest.

Third, the issue of the extent of the security of the mortgage was actually litigated and decided in the first action. Plaintiffs requested to amend the complaint, defendant filed a response arguing futility, and the circuit court heard arguments from both counsel on the issue. After hearing arguments, the circuit court took defendant's motion under advisement. The court's opinion, read from the bench, directly addressed the issue of the extent of the secured interest and found for defendant. Plaintiffs dispute this by arguing that the issue was not technically before the court because the amendment was never allowed. However, defendant's reply brief arguing the merits of the issue was before the circuit court and was adopted by the circuit court in granting defendant's motion for summary disposition. The issue was therefore actually litigated and necessarily determined in the first action. Plaintiffs' second

[1] The circuit court relied on the analysis of res judicata in *Dart v Dart*, 224 Mich App 146, 156; 568 NW2d 353 (1997), which states that res judicata bars a second suit between the same parties if the essential facts and evidence required to maintain the second suit are identical to the facts and evidence that were essential to the maintenance of the first suit.

action against defendant, which raised the same issue by seeking to limit the extent of the security of the mortgage, is thus barred. The circuit court properly granted summary disposition under MCR 2.116(C)(7).

II

Plaintiffs next contend that the trial court abused its discretion in awarding sanctions to defendant. We disagree.

We review the circuit court's factual finding that a pleading or other paper was signed in violation of MCR 2.114(D) for clear error. *Jackson City Hog Producers v Consumers Power Co*, 234 Mich App 72, 91; 592 NW2d 112 (1999). If a pleading is signed in violation of this rule, or if a party brings a frivolous claim, the party, the attorney, or both may be sanctioned. MCR 2.114(E), (F).

A claim is frivolous when (1) the party's purpose in bringing the claim was to harass, embarrass, or otherwise injure the prevailing party, (2) the party bringing the claim had no reasonable basis on which to believe that the underlying facts necessary to the claim were true, or (3) the party's position was devoid of legal merit. MCL 600.2591(3)(a); MSA 27A.2591(3)(a); *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266-267; 548 NW2d 698 (1996). This Court reviews the case in light of the facts and circumstances that existed at the time the suit was brought when determining whether the suit had a basis in law or fact. *Meagher v Wayne State University*, 222 Mich App 700, 727; 565 NW2d 401 (1997).

The circuit court awarded sanctions under MCR 2.114(E) on the basis that plaintiffs' suit for declaratory judgment was devoid of legal merit.

We conclude that the circuit court did not clearly err in imposing sanctions. First, Michigan law is clear that summary dispositions and denials of leave to amend pleadings based on futility or lack of a compelling argument are final determinations on the merits for purposes of res judicata. *DeCare*, *supra* at 77-78; *Martin*, *supra* at 383-384. Second, the pertinent transcript is clear that the circuit court decided the issue of the extent of defendant's security when it granted defendant summary disposition in the first action. Plaintiffs' argument that they relied on the court's written order, which did not address the priority issue, and that their counsel had not been present when the circuit court read its opinion from the bench is inaccurate because an attorney appeared on plaintiffs' behalf and stated that he was standing in for plaintiffs' counsel.

Under these circumstances, the circuit court did not err in finding that plaintiffs and their counsel failed to make a reasonable inquiry into the subject matter of their complaint for declaratory relief prior to signing it.

III

In Docket No. 215324, plaintiffs' counsel contends that the circuit court erred in imposing sanctions against him. The circuit court stated in its opinion addressing plaintiffs' objections to the proposed sanctions that it was clear that plaintiffs relied on the advice of counsel in pursuing the second

action, and that it would thus impose sanctions on plaintiffs and plaintiffs' counsel jointly and severally. For this and the above stated reasons, we find no error.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Joel P. Hoekstra